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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/876,437	06/16/1997	MARIANTHI GIAKOUMAKIS		5017

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Marianthi Giakoumakis
321 Caisse
Montreal, Quebec, H4G 3M3
CANADA

EXAMINER	
CAMPEN, KELLY SCAGGS	
ART UNIT	**PAPER NUMBER**
3624	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	08/876,437	GIAKOUMAKIS, MARIANTHI	
	Examiner	Art Unit	
	Kelly Campen	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *25-28 and 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *25-28,30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/09/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 USC § 112

Claims 25-28, 30 are rejected under 35 U.S.C. 101 because the claimed invention, sustainable, non surgical breast enlargement through the continued application of cocoa butter and Vitamin E is not supported by either a credible asserted utility or a well established utility.

Applicant's assertion of specific credible utility is not considered credible. One of ordinary skill in the art would not find applicant's assertion of utility credible because applicant has not offered any statistically significant evidence to prove such.

Claims 25-28, 30 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention and would not find applicant's assertion of utility credible because applicant has not offered any statistically significant evidence to prove such as stated previously.

In addition, see MPEP 2107.03,

> " affidavit evidence from experts in the art indicating that there is a reasonable expectation of success, supported by sound reasoning, usually should be sufficient to establish that such a utility is credible."

As such, Applicant has relied upon the Cayce reference to teach the use of cocoa butter to increase breast size. The only assertion is the closest prior art that contradict Applicant's

allegation. See Cayce, page 285, line 8, "To Reduce Bust" continuing in lines 9-22 describing the use of cocoa butter massaged into the breast to reduce the size of the bust.

Therefore, the disclosed method of breast enlargement would not be accepted as obviously valid by one of ordinary skill in the art. In addition, see the cited prior art (Van Dellen, Martineau 6/1903 and 2/1904) not relied upon for further examples of not obviously valid by one of ordinary skill in the art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 25-28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell (Chicago Daily Tribune, 1911). Russell discloses a method of enlarging a breast with cocoa butter but does not disclose the use of vitamin E. Vitamin E is commonly used to treat the skin, it is readily found in any body lotion for the skin, including the breast. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Vitamin E and cocoa butter to treat the breast as both are well known for treating dry skin, including treating the nipple and breast when nursing and for treating the skin to prevent or lessen the

effects of stretch marks (i.e. PALMER'S cocoa butter and stretch mark cream which includes both cocoa butter and vitamin E).

Claims 25-28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martineau (Chicago Daily Tribune, 1903). Martineau discloses a method of enlarging a breast with cocoa butter but does not disclose the use of vitamin E. Vitamin E is commonly used to treat the skin, it is readily found in any body lotion for the skin, including the breast. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Vitamin E and cocoa butter to treat the breast as both are well known for treating dry skin, including treating the nipple and breast when nursing and for treating the skin to prevent or lessen the effects of stretch marks (i.e. PALMER'S cocoa butter and stretch mark cream which includes both cocoa butter and vitamin E).

Response to Arguments

Applicants arguments against the Cayce reference are moot as it is no longer being applied.

In response to applicant's arguments against the 35 USC 101 rejection, arrangement for a study alone, absent the results from said study is ineffective in overcoming a 35 USC 101 rejection.

In response to applicant's arguments against the 35 USC 103 (a) rejections, each reference was applied to show it is old in the art to apply cocoa butter to the breast for augmentation. Vitamin E is well known in the art to be used as a skin treatment for suppleness

and as an antioxidant. Vitamin E is well known to be used in combination with cocoa butter for the treatment of the skin and the epidermis. The epidermis contains Vitamin E and it is well known that to replace this with topical or oral administration of vitamin E will retain the skin elasticity as well as moisturize.

Conclusion

This is a continuation of applicant's earlier Application No. 08/876437. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Campen whose telephone number is (571) 272-6740. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KSC

VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600